



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-018, C-570-019]

Boltless Steel Shelving Units Prepacked for Sale from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Edsal Manufacturing Company, Inc. (Edsal), the U.S. Department of Commerce (Commerce) is initiating a circumvention inquiry to determine whether imports of boltless steel shelving units prepackaged for sale (boltless steel shelving), which are completed or assembled in Malaysia using certain components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on boltless steel shelving from China.

DATES: Applicable [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2593.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), Edsal filed a circumvention inquiry request alleging that boltless steel shelving completed or assembled in Malaysia using certain components manufactured in China and imported to the United States are circumventing the *Orders*¹ and,

¹ See *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Antidumping Duty Order*, 80 FR 63741 (October 21, 2015); *Boltless Steel Shelving Units Prepackaged for Sale from the People's*

accordingly, should be included within the scope of the *Orders*.² On November 21, 2022, we extended the deadline to initiate this circumvention inquiry by 15 days, to December 5, 2022, in accordance with 19 CFR 351.226(d)(1).³

Scope of the *Orders*

The merchandise covered by these *Orders* is boltless steel shelving units prepackaged for sale. Merchandise covered by these *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 9403.20.0018, 9403.20.0020, 9403.20.0025, and 9403.20.0026, but may also enter through HTSUS 9403.10.0040. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive. For a complete description of the scope of the *Orders*, see the Initiation Memorandum.⁴

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers boltless steel shelving that has been completed or assembled in Malaysia using, at a minimum, the key components of boltless steel shelving, *i.e.*, vertical posts and horizontal beams, from China, that are then subsequently exported to the United States.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege

Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 80 FR 63745 (October 21, 2015) (collectively, *Orders*).

² See Edsal's Letter, "Boltless Steel Shelving Units Prepackaged for Sale from China – Petitioner's Request for Circumvention Ruling Pursuant to Section 781(b), as Amended," dated October 20, 2022.

³ See Memorandum, "Extension of Time to Determine Whether to Initiate Circumvention Inquiry," dated November 21, 2022.

⁴ See Memorandum, "Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Initiation of Circumvention Inquiries," dated concurrently with, and hereby adopted by, this notice (Initiation Memorandum).

“that the elements necessary for a circumvention determination under section 781 of the Act exist” and be “accompanied by information reasonably available to the interested party supporting these allegations.” Edsal alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

According to section 781(b)(1) of the Act, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, Commerce may find merchandise imported into the United States to be covered by the scope of an order if: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order or finding or a CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or finding or is produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD (or CVD) order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise completed or assembled in a third country within

the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the third country for completion or assembly is affiliated with the person in the third country who assembles or completes the merchandise that is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country that was completed or assembled have increased after the initiation of the investigation which resulted in the issuance of the order or finding.

Based on our analysis of Edsal's circumvention request, we determined that Edsal's request satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention inquiry of the *Orders*. For a full discussion of the basis for our decision to initiate the requested circumvention inquiry, *see* the Initiation Memorandum.⁵ Moreover, as explained in the Initiation Memorandum, based on the information provided by Edsal, we are initiating a country-wide circumvention inquiry. Commerce has taken this approach in prior circumvention inquiries where the facts warranted initiation on a country-wide basis.⁶

Consistent with the approach taken in prior circumvention inquiries that Commerce initiated on a country-wide basis, we intend to solicit information from certain companies in Malaysia concerning their production of boltless steel shelving and their shipments thereof to the United States. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

⁵ *See* Initiation Memorandum.

⁶ *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

For companion AD and CVD proceedings, “the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.”⁷ Further, once “the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.”⁸ Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify U.S. Customs and Border Protection (CBP) of its initiation of the requested circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce has determined that Edsal’s request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of a circumvention inquiry to determine whether U.S. imports of boltless steel shelving that have been completed or assembled in, and exported from, Malaysia using certain components manufactured in China, are circumventing the *Orders*. We included a description of the products that are subject to the circumvention inquiry, and an explanation of the reasons for Commerce’s

⁷ See 19 CFR 351.226(m)(2).

⁸ *Id.*

decision to initiate these inquiries, in the accompanying Initiation Memorandum.⁹ In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary determination in these circumvention proceedings no later than 150 days from the date of publication of this notice in the *Federal Register*.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: December 5, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

⁹ See Initiation Memorandum.

Appendix

List of Topics Discussed in the Circumvention Initiation Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Statutory and Regulatory Framework for Circumvention Inquiries
- VI. Statutory Analysis for the Circumvention Inquiry
- VII. Country-Wide Circumvention Inquiry
- VIII. Recommendation

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